

FINDING OF EMERGENCY

The Board of Barbering and Cosmetology finds that an emergency exists, and that the foregoing amendments to regulations, and adoptions of regulations, are necessary for the immediate preservation of the public peace, health and safety, or general welfare.

Specific Facts Showing the Need for Immediate Action

Consumer health issues associated with pedicures have become a matter of increasing concern in recent years. Outbreaks of staph infections and mycobacteria infections resulting from pedicures have caused injury, disfigurement and even death. In California, there was an outbreak of skin boils in October 2000, where more than 100 pedicure customers were affected by the outbreak. The outbreak was traced back to a single salon where foot spa equipment was not properly cleaned and disinfected. As a result, the Board adopted new regulations in the spring of 2001, which required more thorough cleaning and disinfecting of foot spas. In November 2004, there was another outbreak of serious pedicure-related skin infections in Santa Clara County. However, this outbreak involved 33 different salons and affected 143 customers.

Another outbreak occurred in March 2005 in Contra Costa County involving 17 people. In 2005, Assemblyman Yee introduced a bill (AB1263 Yee) that would have set minimum safety standards for pedicure equipment and required the Board to adopt regulations regarding proper cleaning and disinfection of pedicure equipment. The bill was vetoed. In the Governors veto message, he directed the Department of Consumer Affairs to convene a working group consisting of the Board, county health officials, consumer groups, pedicure equipment manufacturers and other interested parties, to determine how to improve the safety of pedicure equipment and ensure appropriate consumer protection. The working group's recommendations were approved by the Board and are currently aggressively attempting to adopt the recommendations to regulations through the APA emergency process.

Assemblyman Yee introduced a bill (AB 409) in the 2006 legislative session designed to coincide with and assist in the enforcement of the new footspa cleaning regulations. The bill provides language for serious action toward licensees and establishment owners that do not abide by health and safety laws relating to foot spa safety and other health and safety laws through the authority to issue disciplinary suspensions. To immediately address serious public health threats of infections, In August 2006, AB 409 adopted an urgency clause and language requiring a probationary period that includes mandatory remedial training, re-inspections at a cost to the establishment, and citation fines. Thus providing consumers with immediate and increased protection while enjoying salon services.

The Board of Barbering and Cosmetology investigated multiple salons for bacterial culture and concluded that there may be similar outbreaks in the future unless we adopt these proposed regulations which facilitates the enforcement of dirty footspas. The Board believes that the terms and conditions of these regulations act as a deterrent to ignoring health and safety laws, and thus provides consumers with increased protection while enjoying salon services. These regulations must be made effective immediately as an emergency so as to establish and implement procedures for the immediate disciplinary suspension authorized by AB 409 and to ensure the preservation of the public, health and safety, or general welfare associated with the use of footbaths as part of pedicures and to protect the public's health and safety.

Authority & Reference Citations

Authority cited: Section 7312, Business and Professions Code. Reference: Section 7303.2, Business and Professions Code.

Informative Digest / Policy Statement Overview

Existing law directs the board to adopt rules governing sanitary conditions necessary to protect the public health and safety in establishments, schools approved by the board, and in the practice of any profession provided for in Chapter 10 of Division 3 of the Business and Professions Code.

At the direction of the Governor, a working group was created to collaborate on how to improve the safety of pedicure equipment and ensure appropriate consumer protection. The working group's recommendations are currently in APA process of being adopted to current regulations.

Recent legislation (AB 409 Yee, Chapter 381, St. 2006) enacted with an urgency clause provides language for serious action toward licensees and establishment owners that do not abide by health and safety laws relating to foot spa safety and other health and safety laws. AB 409 also authorizes the Board to issue disciplinary suspensions, place licensees on probation, require the licensee to meet terms and conditions while on probation, and ability to reinstate licenses if terms have been met.

By adopting these regulations, the Board can implement its authority for disciplinary suspensions, immediate stays of suspensions, establish the terms and conditions for probation and reinstatements of licenses. The Board believes that the terms and conditions of these regulations act as a deterrent to ignoring health and safety laws, and thus provides consumers with increased protection while enjoying salon services.

Section 973., Grounds for Immediate Suspension.

This regulation adopts language defining what constitutes an immediate suspension and establishes the procedure for requesting the immediate suspension of a license. The effect of this regulation is to identify where the public's health and safety and general welfare is seriously threatened due to violations to health and safety laws related to manicure and pedicure equipment.

Section 973.1, Procedures for issuing Immediate Suspension.

This regulation adopts language establishing the basis of the suspension and how a determination shall be made. The effect of this regulation is to provide relative, quick, and best possible information to the Executive Officer in order to render a decision if consumer harm may be possible and to order the issuance of an immediate suspension via the designee.

Section 973.2, Content of Immediate Suspension Notice.

This regulation adopts language specific to the content of the suspension notice and details the nature of violations. The effect of this regulation is to notify the licensee of the details of the suspension and processes necessary to resolve the suspension.

Section 973.3, Terms and Conditions of Probation

This regulation adopts language specific to the terms and conditions of the suspension. The effect of this regulation is to notify the licensee of the terms and conditions they are required to meet while on probation and to ensure that the public's health and safety and general welfare are protected. Additionally, notification of the public that equipment in the establishment has been deemed unsafe.

Section 973.4, Remedial Training Defined

This regulation adopts language specific to the content and subject matter of the required remedial training. The effect of this regulation is to ensure that the licensee corrects and is educated on proper sanitation and disinfection procedures associated with manicuring and pedicure equipment in order to comply with existing laws and to provide safe services to the public upon reinstatement of their license.

Section 973.5, Approval of Remedial Training Course

This regulation adopts language specific to the course content, method of instruction, qualification of instructor, and requires the approval by the Board of the course and provider of remedial training. The effect of this regulation is to ensure the content, staff, provider of the remedial training addresses the needs of the Board in association to sanitation and disinfection, health and safety laws of manicuring and pedicure equipment.

Section 973.6 Appeal Process

This regulation adopts language specific to the appeal process for a licensee who has been placed on suspension and placed probation. The effect of this regulation is to ensure the licensee has the ability to request due process.

Fiscal Estimate

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None

Nondiscretionary Costs/Savings to Local Agencies:

None

Local Mandate:

None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement:

The board has determined that the regulations and adoptions will involve no costs or savings to any State Agency, Local Agency, or School District.

Business Impact:

The board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting

business, including the ability of California businesses to compete with businesses in other states.

The following studies/relevant data were relied upon in making the above determination:

(A) Current statutes section 490 of the General Business and Professions Code has caused no adverse economic impact that effect businesses.

Impact on Jobs/New Businesses:

The Board for Barbering and Cosmetology has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business:

The Board for Barbering and Cosmetology is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs:

None